

## **IC 33-38-8**

### **Chapter 8. 1985 Retirement, Disability, and Death System**

## **IC 33-38-8-1**

### **Application of chapter**

Sec. 1. This chapter applies only to an individual who begins service as a judge after August 31, 1985.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-2**

### **"Americans with Disabilities Act" defined**

Sec. 2. As used in this chapter, "Americans with Disabilities Act" refers to the Americans with Disabilities Act (42 U.S.C. 12101 et seq.) and any amendments and regulations related to the act.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-3**

### **"Board" defined**

Sec. 3. As used in this chapter, "board" refers to the board of trustees of the public employees' retirement fund.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-4**

### **"Employer" defined**

Sec. 4. As used in this chapter, "employer" means the state of Indiana.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-5**

### **"Fund" defined**

Sec. 5. As used in this chapter, "fund" refers to the Indiana judges' retirement fund established by IC 33-38-6-12.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-6**

### **"Internal Revenue Code" defined**

Sec. 6. (a) As used in this chapter, "Internal Revenue Code":

(1) means the Internal Revenue Code of 1954, as in effect on September 1, 1974, if permitted with respect to governmental plans; or

(2) to the extent consistent with subdivision (1), has the meaning set forth in IC 6-3-1-11.

*As added by P.L.98-2004, SEC.17.*

## **IC 33-38-8-7**

### **"Participant" defined**

Sec. 7. As used in this chapter, "participant" means a judge who participates in the fund.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-8**

#### **"Salary" defined**

Sec. 8. As used in this chapter, "salary" means the total salary paid to a participant by the state and by a county or counties, determined without regard to any salary reduction agreement established under Section 125 of the Internal Revenue Code.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-9**

#### **"Services" defined**

Sec. 9. As used in this chapter, "services" means the period beginning on the first day a person first becomes a judge, whether the date is before, on, or after March 11, 1953, and ending on the date under consideration and includes all intervening employment as a judge.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-10**

#### **Participants**

Sec. 10. A person who:

- (1) begins service as a judge after August 31, 1985; and
- (2) is not a participant in the fund;

shall become a participant in the fund.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-11**

#### **Contributions**

Sec. 11. (a) A participant shall make contributions to this fund of six percent (6%) of each payment of salary received for services as judge. However, the employer may elect to pay the contribution for the participant as a pickup under Section 414(h) of the Internal Revenue Code.

(b) Participants' contributions, other than participants' contributions paid by the employer, shall be deducted from the monthly salary of each participant by the auditor of state and by the county auditor and credited to the fund as provided in IC 33-38-6-21 and IC 33-38-6-22. However, a contribution is not required:

- (1) because of any salary received after the participant has contributed to the fund for twenty-two (22) years; or
- (2) during any period that the participant is not serving as judge.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-12**

#### **Withdrawal of participant from fund**

Sec. 12. (a) A participant who:

- (1) ceases service as a judge, other than by death or disability; and
- (2) is not eligible for a retirement benefit under this chapter;

is entitled to withdraw from the fund, beginning on the date specified by the participant in a written application. The date on which the

withdrawal begins may not be before the date of final termination of employment or the date thirty (30) days before the receipt of the application by the board.

(b) Upon the withdrawal, the participant is entitled to receive the total sum contributed, payable within sixty (60) days from date of withdrawal application or in monthly installments as the participant may elect.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-13**

#### **Retirement benefits; termination of employment; conditions**

Sec. 13. A participant whose employment as judge is terminated is entitled to a retirement benefit computed under section 14 of this chapter, beginning on the date specified by the participant in a written application, if the following conditions are met:

- (1) The date on which the benefit begins is not:
  - (A) before the date of final termination of employment of the participant; or
  - (B) the date thirty (30) days before the receipt of the application by the board.
- (2) The participant:
  - (A) is at least sixty-two (62) years of age and has at least eight (8) years of service credit;
  - (B) is at least fifty-five (55) years of age and the participant's age in years plus the participant's years of service is at least eighty-five (85); or
  - (C) has become permanently disabled.
- (3) The participant is not receiving a salary from the state for services currently performed, except for services rendered in the capacity of judge pro tempore or senior judge.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-14**

#### **Retirement benefits; computation of amount**

Sec. 14. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) A participant who:

- (1) applies for a retirement benefit; and
- (2) is at least:
  - (A) sixty-five (65) years of age; or
  - (B) fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter;

is entitled to an annual retirement benefit as calculated in subsection (c).

(c) The annual retirement benefit for a participant who meets the requirements of subsection (b) equals the product of:

- (1) the salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

| Participant's Years | Percentage |
|---------------------|------------|
|---------------------|------------|

|            |     |
|------------|-----|
| of Service |     |
| 8          | 24% |
| 9          | 27% |
| 10         | 30% |
| 11         | 33% |
| 12         | 50% |
| 13         | 51% |
| 14         | 52% |
| 15         | 53% |
| 16         | 54% |
| 17         | 55% |
| 18         | 56% |
| 19         | 57% |
| 20         | 58% |
| 21         | 59% |
| 22 or more | 60% |

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

(d) Except as provided in section 13(2)(B) of this chapter and subsection (b)(2)(B), if a participant who applies for a retirement benefit has not attained sixty-five (65) years of age, the participant is entitled to receive a reduced annual retirement benefit that equals the benefit that would be payable if the participant were sixty-five (65) years of age reduced by one-tenth percent (0.1%) for each month that the participant's age at retirement precedes the participant's sixty-fifth birthday. This reduction does not apply to:

- (1) participants who are separated from service because of permanent disability;
- (2) survivors of participants who die while in service after August 1, 1992; or
- (3) survivors of participants who die while not in service but while entitled to a future benefit.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-15**

#### **Permanent disability of participants; certification; recovery; transcripts, reports, records, and other materials**

Sec. 15. (a) A participant is considered permanently disabled if the board has received a written certification by at least two (2) licensed and practicing physicians, appointed by the board, that:

- (1) the participant is totally incapacitated, by reason of physical or mental infirmities, from earning a livelihood; and
- (2) the condition is likely to be permanent.

(b) The participant shall be reexamined by at least two (2) physicians appointed by the board, at the times the board designates but at intervals not to exceed one (1) year. If, in the opinion of these physicians, the participant has recovered from the participant's disability, then benefits shall cease to be payable as of the date of the

examination unless, on that date, the participant is at least:

- (1) sixty-five (65) years of age; or
- (2) fifty-five (55) years of age and meets the requirements under section 13(2)(B) of this chapter.

(c) To the extent required by the Americans with Disabilities Act, the transcripts, reports, records, and other material generated by the initial and periodic examinations and reviews to determine eligibility for disability benefits under this section shall be:

- (1) kept in separate medical files for each member; and
- (2) treated as confidential medical records.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-16**

#### **Permanent disability of participants; amount of benefits**

Sec. 16. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) A participant who becomes permanently disabled is entitled to an annual benefit that equals the product of:

- (1) the salary that was paid to the participant at the time of separation from service; multiplied by
- (2) the percentage prescribed in the following table:

| Participant's Years<br>of Service | Percentage |
|-----------------------------------|------------|
| 0-12                              | 50%        |
| 13                                | 51%        |
| 14                                | 52%        |
| 15                                | 53%        |
| 16                                | 54%        |
| 17                                | 55%        |
| 18                                | 56%        |
| 19                                | 57%        |
| 20                                | 58%        |
| 21                                | 59%        |
| 22 or more                        | 60%        |

If a participant has a partial year of service in addition to at least eight (8) full years of service, an additional percentage shall be calculated by prorating between the applicable percentages, based on the number of months in the partial year of service.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-17**

#### **Death of participant; benefits of surviving spouse or children**

Sec. 17. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) The surviving spouse or child or children, as designated by the participant, of a participant who:

- (1) dies; and
- (2) on the date of death:
  - (A) was receiving benefits under this chapter;
  - (B) had completed at least eight (8) years of service and was

in service as a judge;  
(C) was permanently disabled; or  
(D) had completed at least eight (8) years of service, was not still in service as a judge, and was entitled to a future benefit; are entitled, regardless of the participant's ages, to the benefit prescribed by subsection (c).

(c) The surviving spouse or child or children, as designated under subsection (b), are entitled to a benefit equal to the greater of:

(1) fifty percent (50%) of the amount of the retirement benefit the participant was drawing at the time of death, or to which the participant would have been entitled had the participant retired and begun receiving retirement benefits on the date of death, with reductions as necessary under section 14(d) of this chapter;

or

(2) the amount determined under the following table:

| Year                              | Amount   |
|-----------------------------------|----------|
| July 1, 1995, to<br>June 30, 1996 | \$10,000 |
| July 1, 1996, to<br>June 30, 1997 | \$11,000 |
| July 1, 1997, and<br>thereafter   | \$12,000 |

(d) The benefit payable to a surviving spouse or surviving child or children under subsection (c) is subject to the following:

(1) A surviving spouse is entitled to receive the benefit for life.

(2) The total monthly benefit payable to a surviving child or children is equal to the same monthly benefit that was to have been payable to the surviving spouse.

(3) If there is more than one (1) child designated by the participant, then the children are entitled to share the benefit in equal monthly amounts.

(4) A child entitled to a benefit shall receive that child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

(5) Upon the cessation of benefits to one (1) designated child, if there are one (1) or more other children then surviving and still entitled to benefits, the remaining children shall share equally the benefit. If the surviving spouse of the participant is surviving upon the cessation of benefits to all designated children, the surviving spouse shall then receive the benefit for the remainder of the spouse's life.

(6) The benefit shall be payable to the participant's surviving spouse if any of the following occur:

(A) No child or children named as a beneficiary by a participant survives the participant.

(B) No child or children designated by the participant is or are entitled to a benefit due to the age of the child or children at the time of death of the participant.

(C) A designation is not made.

(7) A benefit payable to a surviving child or children may be paid to a trust or a custodian account under IC 30-2-8.5, established for the surviving child or children as designated by the participant.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-18**

#### **Death of participant; benefits of dependent children**

Sec. 18. (a) Benefits provided under this section are subject to IC 33-38-6-13 and section 20 of this chapter.

(b) If a participant's spouse does not survive the participant, and there is no child designated and entitled to receive a benefit under section 17 of this chapter, any surviving dependent child of a participant is, upon the death of the participant, entitled to a benefit equal to the benefit the participant's spouse would have received under section 17 of this chapter.

(c) If a surviving spouse of a decedent participant dies and a dependent child of the surviving spouse and the decedent participant survives them, the dependent child is entitled to receive a benefit equal to the benefit the spouse was receiving or would have received under section 17 of this chapter.

(d) If there is more than one (1) dependent child, then the dependent children are entitled to share the benefit equally.

(e) A dependent child is entitled to receive the child's share until the child becomes eighteen (18) years of age or during the entire period of the child's physical or mental disability, whichever period is longer.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-19**

#### **Death of participant; payments when no benefits payable to survivors**

Sec. 19. (a) Benefits provided under this section are subject to IC 33-38-6-13.

(b) If benefits are not payable to the survivors of a participant who dies, and if a withdrawal application is filed with the board, the total of the participant's contributions plus interest (as determined by the board) minus any payments made to the participant shall be paid to:

- (1) the surviving spouse of the participant or a child or children of the participant, as designated by the participant;
- (2) any other dependent or dependents of the participant, if a spouse or designated child or children does or do not survive; or
- (3) the participant's estate, if a spouse, designated child or children, or other dependent does or do not survive.

(c) The amount owed a spouse, designated child or children, or other dependent or dependents, or estate under subsection (b) is payable within sixty (60) days from the date of receipt of the withdrawal application or in the monthly installments as the recipient elects.

*As added by P.L.98-2004, SEC.17.*

**IC 33-38-8-20****Maximum annual benefit under Internal Revenue Code**

Sec. 20. Notwithstanding any other provision of this chapter, benefits paid under this chapter may not exceed the maximum annual benefit specified by Section 415 of the Internal Revenue Code.

*As added by P.L.98-2004, SEC.17.*

**IC 33-38-8-21****Service credit; contributions after retirement for subsequent service as judge**

Sec. 21. (a) A judge is entitled to a month of service credit for services performed in any fraction of a calendar month. However, a judge is not entitled to more than one (1) month of credit for services performed in a calendar month.

(b) Except as otherwise provided in this chapter, if a judge is elected or appointed and serves one (1) or more terms or part of a term then retires from office but at a later period or periods is appointed or elected and serves as judge, the judge shall pay into the fund during all the periods served as judge, whether the periods are served consecutively or not.

(c) Except as otherwise provided in this chapter, a judge is not required to pay into the fund:

- (1) at any time when the judge is not serving as judge; or
- (2) during any period of service as a senior judge under IC 33-23-3.

*As added by P.L.98-2004, SEC.17.*

**IC 33-38-8-22****Credit for prior service as full-time referee, commissioner, or magistrate; rollover distributions; trustee to trustee transfers**

Sec. 22. (a) This section applies to a person who:

- (1) is a judge participating under this chapter;
- (2) before becoming a judge was appointed by a court to serve as a full-time referee, full-time commissioner, or full-time magistrate;
- (3) was a member of the public employees' retirement fund during the employment described in subdivision (2); and
- (4) received credited service under the public employees' retirement fund for the employment described in subdivision (2).

(b) If a person becomes a participant in the judges' 1985 benefit system under section 1 of this chapter, credit for prior service by the judge as a full-time referee, full-time commissioner, or full-time magistrate shall be granted under this chapter by the board if:

- (1) the prior service was credited under the public employees' retirement fund;
- (2) the state contributes to the judges' 1985 benefit system the amount the board determines necessary to amortize the prior service liability over a period determined by the board, but not more than ten (10) years; and
- (3) the judge pays in a lump sum or in a series of payments



determined by the board, not exceeding five (5) annual payments, the amount the judge would have contributed if the judge had been a member of the judges' 1985 benefit system during the prior service.

(c) If the requirements of subsection (b)(2) and (b)(3) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under subsection (b)(2) or (b)(3) must include interest at a rate determined by the board.

(e) The following provisions apply to a person described in subsection (a):

(1) A minimum benefit applies to participants receiving credit in the judges' 1985 benefit system from service covered by the public employees' retirement fund. The minimum benefit is payable at sixty-five (65) years of age or when the participant is at least fifty-five (55) years of age and meets the requirements under section 13(2)(b) of this chapter and equals the actuarial equivalent of the vested retirement benefit that is:

(A) payable to the member at normal retirement under IC 5-10.2-4-1 as of the day before the transfer; and

(B) based solely on:

(i) creditable service;

(ii) the average of the annual compensation; and

(iii) the amount credited under IC 5-10.2 and IC 5-10.3 to the annuity savings account of the transferring member as of the day before the transfer.

(2) If the requirements of subsection (b)(2) and (b)(3) are satisfied, the board shall transfer from the public employees' retirement fund to the judges' 1985 benefit system the amount credited to the annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age or at least fifty-five (55) years of age under section 13(2)(b) of this chapter that is attributable to the transferring participant.

(3) The amount the state and the participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the board under subdivision (2).

(4) If the requirements of subsection (b)(2) and (b)(3) are satisfied, credit for prior service in the public employees' retirement fund as a full-time referee, full-time commissioner, or full-time magistrate is waived. Any credit for the prior service under the judges' 1985 benefit system may be granted only under subsection (b).

(f) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section

403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(g) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

*As added by P.L.98-2004, SEC.17.*

### **IC 33-38-8-23**

#### **Credit for prior service as member of Indiana public employees' retirement fund; rollover distributions; trustee to trustee transfers**

Sec. 23. (a) This section applies only to a person who:

(1) is a judge participating under this chapter;

(2) before becoming a judge was a member of a public employees' retirement fund;

(3) received credited service under a public employees' retirement fund for the employment described in subdivision (2), and the credited service is not eligible for prior service credit under section 22 of this chapter;

(4) has not attained vested status under a public employees' retirement fund for the employment described in subdivision (2); and

(5) has at least eight (8) years of service credit in the judges' retirement system.

(b) If a person becomes a participant in the judges' 1985 benefit system under this chapter, credit for service described in subsection (a) shall be granted under this chapter by the board if:

(1) the prior service was credited under a public employees' retirement fund; and

(2) the judge pays in a lump sum or in a series of payments determined by the board, not exceeding five (5) annual payments, the amount determined by the actuary for the 1985 benefit system as the total cost of the service.

(c) If the requirements of subsection (b) are not satisfied, a participant is entitled to credit only for years of service after the date of participation in the 1985 benefit system.

(d) An amortization schedule for contributions paid under this section must include interest at a rate determined by the board.

(e) If the requirements of subsection (b) are satisfied, the appropriate board shall transfer from the retirement fund described in subsection (a)(2) to the judges' 1985 benefit system the amount credited to the judge's annuity savings account and the present value of the retirement benefit payable at sixty-five (65) years of age that is attributable to the transferring participant.

(f) The amount a participant must contribute to the judges' 1985 benefit system under subsection (b) shall be reduced by the amount transferred to the judges' 1985 benefit system by the appropriate board under subsection (e).

(g) If the requirements of subsection (b) are satisfied, credit for prior service in a public employees' retirement fund is waived.

(h) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a rollover of a distribution from any of the following:

(1) A qualified plan described in Section 401(a) or Section 403(a) of the Internal Revenue Code.

(2) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(3) An eligible plan that is maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or political subdivision of a state under Section 457(b) of the Internal Revenue Code.

(4) An individual retirement account or annuity described in Section 408(a) or Section 408(b) of the Internal Revenue Code.

(i) To the extent permitted by the Internal Revenue Code and the applicable regulations, the judges' 1985 benefit system may accept, on behalf of a participant who is purchasing permissive service credit under subsection (b), a trustee to trustee transfer from any of the following:

(1) An annuity contract or account described in Section 403(b) of the Internal Revenue Code.

(2) An eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code.

*As added by P.L.98-2004, SEC.17.*